

White House Conference on Aging Post-Event Summary Report

Name of Event: Advanced Directives, Their Acceptance, Advantages and Deficits.

Date of Event: September 21, 2005

Location of Event: Hill Country Senior Citizen's Activity Center
Dripping Springs, Texas

Number of Persons Attending: 34 (due, in part, to the looming Hurricane Rita)

Sponsoring Organizations: Texas Association of Area Agencies on Aging, State Bar of Texas
and the Texas Chapter of the National Academy of Elder Law
Attorneys

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Background and Purpose of WHCoA

“The 2005 White House Conference on Aging is intended to produce policy recommendations to guide national aging policy over the next decade through 2015. The leading edge of the baby boomers will begin to turn 60 within two years, and for the next three to four decades, the 60+ population will be significantly larger than today. The 2005 White House Conference on Aging will focus on opportunities and challenges presented by the ‘new’ 60+ population of 78 million, as well as consider issues that impact the mature older population.” *Background and Purpose*, http://www.whcoa.gov/about/whcoa_events.asp

Priority Issue: Understanding Advanced Directives.

Understanding Advanced Directives sounds like a simple matter. Just talk with your attorney and you should be able to, at least, plan for the medical issues of aging. However, it was apparent from the public reports and media discussions following the widely publicized life and death of Terry Schiavo in Florida, that the use and application of Advanced Directives is widely misunderstood.¹

¹ See, for example, *Misconceptions abound in long-term health care, Medicaid*, Joan Stableford, Westchester County Business Journal, July 4, 2005, p. 19; *Creative, combined care plan provides best of both worlds* *Growing Older*, Liz Taylor, Seattle Times, June 20, 2005, p. E5; “CNN.com asked its users how the legal, moral and medical issues surrounding Terri Schiavo's life and death have affected their views or changed their lives.” The posted emails, dated March 31, 2005, reveal the confusion about the application of Advanced Directives.

Advanced directive is a broad term describing documents that can be executed in advance of a need brought on by physical or mental disability. Generally included in advanced directives are Medical Powers of Attorney (a.k.a. Medical or Health Care Proxy, Health Care Power of Attorney) and Directive to Physician and Family or Surrogates (a.k.a. living will). By executing a Medical Power of Attorney, an individual can name an agent to make medical decisions in the event of incapacity. A living will is nothing more than a directive or message to a physician and family setting out end-of-life care instructions in the event the individual is not capable of communicating thoughts and wishes.

In an effort to address the confusion over the use and effect of Advanced Directives, the State Bar of Texas, Texas Chapter of the National Academy of Elder Law Attorneys (“TX-NAELA”)² and the Texas Association of Area Agencies on Aging collaborated to create a program that would provide clear information about legal issues in a setting that was intended to reach the broadest audience of seniors. The September 21, 2005 event was hopefully only the first of many more events offered to Texas seniors by these collaborators. The participation of the Area Agencies on Aging was crucial to reach out to Texas seniors because of the Area Agencies on Aging time-tested experience in education and the long established trust of the elder community in the offerings of the Area Agencies on Aging.

TX-NAELA collaborated with the State Bar of Texas to furnish the Area Agencies on Aging with video taped modules that provided an overview of legal issues relating to advanced directives. In addition to working with the State Bar of Texas to create the video taped modules, TX-NAELA drafted six questions that highlighted major areas of uncertainty about Advanced Directives and submitted those questions to the event participants with the intention of using the results to target areas of needed clarification. The questions and results are as follows:

1. Do you think that an agent under a **Medical Power of Attorney** can make decisions for you if you are competent? 18% of the participants incorrectly answered “yes” or did not know.
2. Do you think that an agent under a **Medical Power of Attorney** can use the **Medical Power of Attorney** to force you to go to a nursing home? 12% of the participants incorrectly answered “yes” or did not know.
3. Is it clear to you that the agent named in a **Medical Power of Attorney** has no authority to talk to the hospital nurse or any other medical provider if you are considered competent? 35% incorrectly thought that the agent could act (or did not know) when a person was competent.
4. The **Directive to Physicians and Family or Surrogates** is often referred to as a “Living Will.” Were you aware that by signing the **Directive to Physicians and Family or Surrogates** you were informing the doctor that you did not want an IV or feeding tube if

²Members of TX-NAELA are attorneys who generally represent the elder client as well as persons who are disabled, addressing issues that are unique to these groups of individuals, including assistance with Advanced Directives.

you were suffering from a terminal or irreversible condition? 41% did not realize that there would be no feeding tube or IV if they signed a standard Texas statutory living will.

5. The **Directive to Physicians and Family or Surrogates** refers to Hospice Care. Do you know what “hospice care” is? 26% of the attendees did not know what “hospice care” meant.
6. Do you think that you can force a physician or other medical provider to honor a **Directive to Physicians and Family or Surrogates** ? 18% of the attendees thought you could force a physician to accept a living will (or did not know).

Clearly, from the statistics there is significant confusion about Advanced Directives. And while the group of participants was small, the results of the posed questions parallel the confusion that was clearly apparent in the media following Terry Schiavo’s death.

Barriers: Advanced directives are legal documents that are widely circulated without the benefit of legal representation and interpretation fostering confusion about the effectiveness and application of the documents.

Advanced directives are legal documents with life and death ramifications but the documents are widely disseminated by non-legal entities and via the internet. Because these legal documents are being circulated as fill-in-the-blank forms, many individuals executing the documents do not understand what they are signing.

Proposed Solution: Support educational programs such as the program promulgated by the Texas sponsoring organizations to assure clear and concise information to seniors that forms the basis for well reasoned life choices.